



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2003

Mr. James T. Russell
Administrative Assistant
27th Judicial District of Texas
P.O. Box 540
Belton, Texas 76513-0540

OR2003-6189

Dear Mr. Russell:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 187062.

The District Attorney for the 27th Judicial District of Texas (the "district attorney") received a request for information relating to two incidents involving a named individual and information about a named police officer and "the shooting incident which occurred in Rogers, Texas." You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information (exhibits A through D).²

Initially, we note that the submitted information includes several court-filed documents (exhibits C and D), which are expressly public under section 552.022 of the Government Code and may not be withheld unless confidential under other law. *See Gov't Code* § 552.022(a)(17). Section 552.108 is a discretionary exception that protects a governmental

¹You state that the district attorney does not have records relating to the incident in Rogers, Texas. We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

²Although you cited sections 552.103, 552.107, 552.111 and 552.136 in your initial letter to this office, you did not submit arguments explaining why these exceptions apply to the information at issue. Therefore, we do not address these exceptions.

body's interests and may be waived. As such, section 552.108 is not other law that makes information confidential for the purposes of section 552.022. *See* Open Records Decision No. 177 (1977) (law enforcement exception may be waived by governmental body); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Therefore, the court-filed documents in exhibits C and D may not be withheld pursuant to section 552.108. You also raise sections 552.101 and 552.130 as possible exceptions to disclosure. These exceptions constitute other law for purposes of section 552.022, and therefore we will consider their applicability to exhibits C and D.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that some of the information in exhibits C and D is protected by the common law and constitutional rights to privacy, which are encompassed by section 552.101. The doctrine of common law privacy protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy and includes only information that concerns the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Having reviewed the court documents in exhibits C and D, we find that none of the information in these documents is protected by the common law or constitutional right to privacy.

Exhibit D contains social security numbers that may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the submitted information are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the district attorney pursuant to any provision of law enacted on or after October 1, 1990.

Exhibits D also contains driver's license information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Section 552.130 protects information relating to Texas drivers' licenses. We have marked the information the district attorney must withhold from disclosure pursuant to section 552.130.

Finally, we consider your argument under section 552.108 for the information in exhibits A and B. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that exhibits A and B relate to a pending criminal prosecution. Based upon this representation, we conclude that the release of exhibits A and B would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 185. Thus, with the exception of the basic front page offense and arrest information, you may withhold exhibits A and B from disclosure based on section 552.108.³ We note that you have the discretion to release all or part of the remaining information in exhibits A and B that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, social security numbers in exhibit D may be excepted from disclosure under section 552.101. The information that we have marked in exhibit D is excepted from

³As we are able to make this determination, we need not address your additional arguments against the disclosure of exhibits A and B.

disclosure under section 552.130 and must be withheld. Exhibit C and the remaining information in exhibit D must be released. With the exception of basic information, exhibits A and B may be withheld from disclosure under section 552.108.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Karen Hattaway". The signature is written in black ink and is positioned above the printed name.

Karen Hattaway
Assistant Attorney General
Open Records Division

KEH/sdk

Ref: ID# 187062

Enc: Submitted documents

c: Ms. Vyki Robbins
P.O. Box 221
Bartlett, Texas 76511
(w/o enclosures)